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BEFORE THE
PHYSICIAN ASSISTANT BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 950-2014-000286

BERNARD WILLIAMS, P.A.

ACCUSATION

15430 Foothill Boulevard

San Leandro, CA 94578

Physician Assistant License No. 19065

Respondent.

Complainant alleges:

PARTIES

1. Maureen L. Forsyth (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Physician Assistant Board, Department of Consumer Affairs.

2. On or about February 21, 2007, the Physician Assistant Board (Board) issued Physician Assistant License Number 19065 to Bernard Williams, P.A. (Respondent). The Physician Assistant License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2018, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3527 of the Code states, in pertinent part:

“(a) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct that includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California. . . .”

“(f) The board may order the licensee to pay the costs of monitoring the probationary conditions imposed on the license.”

5. Section 2234 of the Code states, in pertinent part:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

“(b) Gross Negligence;

“(e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.”

6. Section 2238 of the Code provides that a violation of any federal or state statute or regulations regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

7. Section 2052 of the Code states in pertinent part:

(a) Any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease,

1 disfigurement, disorder, injury, or other physical or mental condition of any person, without
2 having at the time of doing so a valid, unrevoked, or unsuspended certificate as provided in this
3 chapter or without being authorized to perform the act pursuant to a certificate obtained in
4 accordance with some other provision of law is guilty of a public offense...”

5 8. Section 2054 of the Code states in pertinent part:

6 (a) “Any person who uses in any sign, business, card, or letterhead, or, in an advertisement,
7 the words “doctor” or “physician,” the letters or prefix “Dr.,” the initials “M.D.,” or any other
8 terms or letters indicting or implying that he or she is a physician and surgeon, physician,
9 surgeon, or practitioner under the terms of this or any other law, or that he or she is entitled to
10 practice hereunder, or who represents or holds himself or herself out as a physician and surgeon,
11 physician, surgeon, or practitioner under the terms of this or any other law, without having at the
12 time of so doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon under
13 this chapter, is guilty of a misdemeanor.”

14 9. Section 2261 of the Code provides in pertinent part that: “Knowingly making or
15 signing any certificate or other document directly or indirectly related to the practice of medicine
16 ... which falsely represents the existence or nonexistence of a state of facts, constitutes
17 unprofessional conduct.”

18 10. Section 3502 of the Code states in pertinent part:

19 “(a) ...a physician assistant may perform those medical services as set forth by the
20 regulations adopted under this chapter when the services are rendered under the supervision of a
21 licensed physician and surgeon who is not subject to a disciplinary condition imposed by the
22 Medical Board of California prohibiting that supervision or prohibiting the employment of a
23 physician assistant.

24 ...

25 “(c)(1) A physician assistant and his or her supervising physician and surgeon shall
26 establish written guidelines for the adequate supervision of the physician assistant. This
27 requirement may be satisfied by the supervising physician and surgeon adopting protocols for
28

1 some or all of the tasks performed by the physician assistant. The protocols adopted pursuant to
2 this subdivision shall comply with the following requirements:

3 “(A) A protocol governing diagnosis and management shall, at a minimum, include
4 the presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or
5 assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and
6 education to be provided to the patient.

7 “(B) A protocol governing procedures shall set forth the information to be provided to
8 the patient, the nature of the consent to be obtained from the patient, the preparation and
9 technique of the procedure, and the follow up care.

10 “(C) Protocols shall be developed by the supervising physician and surgeon or
11 adopted from, or referenced to, texts or other sources.

12 “(D) Protocols shall be signed and dated by the supervising physician and surgeon
13 and the physician assistant.

14 “(2)(A)(i) The supervising physician and surgeon shall review, countersign, and date a
15 sample consisting of, at a minimum, 5 percent of the medical records of patients treated by the
16 physician assistant functioning under the protocols within 30 days of the date of treatment by the
17 physician assistant.

18 “(2)(B) The supervising physician and surgeon shall select for review those cases that by
19 diagnosis, problem, treatment, or procedure represent, in his or her judgment, the most significant
20 risk to the patient.

21 “(3) ... the Medical Board of California or the board may establish other alternative
22 mechanisms for the adequate supervision of the physician assistant....

23 11. Section 3502.1 of the Code states:

24 “(a) In addition to the services authorized in the regulations adopted by the Medical Board
25 of California, and except as prohibited by Section 3502, while under the supervision of a licensed
26 physician and surgeon or physicians and surgeons authorized by law to supervise a physician
27 assistant, a physician assistant may administer or provide medication to a patient, or transmit
28

1 orally, or in writing on a patient's record or in a drug order, an order to a person who may
2 lawfully furnish the medication or medical device pursuant to subdivisions (c) and (d).

3 “(1) A supervising physician and surgeon who delegates authority to issue a drug order to a
4 physician assistant may limit this authority by specifying the manner in which the physician
5 assistant may issue delegated prescriptions.

6 “(2) Each supervising physician and surgeon who delegates the authority to issue a drug
7 order to a physician assistant shall first prepare and adopt, or adopt, a written, practice specific,
8 formulary and protocols that specify all criteria for the use of a particular drug or device, and any
9 contraindications for the selection. Protocols for Schedule II controlled substances shall address
10 the diagnosis of illness, injury, or condition for which the Schedule II controlled substance is
11 being administered, provided or issued. The drugs listed in the protocols shall constitute the
12 formulary and shall include only drugs that are appropriate for use in the type of practice engaged
13 in by the supervising physician and surgeon. When issuing a drug order, the physician assistant
14 is acting on behalf of and as an agent for a supervising physician and surgeon.

15 “(b) “Drug order” for purposes of this section, means an order for medication which is
16 dispensed to or for a patient, issued and signed by a physician assistant acting as an individual
17 practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal
18 Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this
19 section shall be treated in the same manner as a prescription or order of the supervising physician,
20 (2) all references to ‘prescription’ in this code and the Health and Safety Code shall include drug
21 orders issued by physician assistants pursuant to authority granted by their supervising
22 physicians, and (3) the signature of a physician assistant on a drug order shall be deemed to be the
23 signature of a prescriber for purposes of this code and the Health and Safety Code.

24 “(c) A drug order for any patient cared for by the physician assistant that is issued by the
25 physician assistant shall either be based on the protocols described in subdivision (a) or shall be
26 approved by the supervising physician before it is filled or carried out.

27 “(1) A physician assistant shall not administer or provide a drug or issue a drug order for a
28 drug other than for a drug listed in the formulary without advance approval from a supervising

1 physician and surgeon for the particular patient. At the direction and under the supervision of a
2 physician and surgeon, a physician assistant may hand to a patient of the supervising physician
3 and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon,
4 manufacturer as defined in the Pharmacy Law, or a pharmacist.

5 “(2) A physician assistant may not administer, provide or issue a drug order for Schedule II
6 through Schedule V controlled substances without advance approval by a supervising physician
7 and surgeon for the particular patient unless the physician assistant has completed an education
8 course that covers controlled substances and that meets standards, including pharmacological
9 content, approved by the board. The education course shall be provided either by an accredited
10 continuing education provider or by an approved physician assistant training program. If the
11 physician assistant will administer, provide, or issue a drug order for Schedule II controlled
12 substances, the course shall contain a minimum of three hours exclusively on Schedule II
13 controlled substances. Completion of the requirements set forth in this paragraph shall be verified
14 and documented in the manner established by the board prior to the physician assistant's use of a
15 registration number issued by the United States Drug Enforcement Administration to the
16 physician assistant to administer, provide, or issue a drug order to a patient for a controlled
17 substance without advance approval by a supervising physician and surgeon for that particular
18 patient.

19 “(3) Any drug order issued by a physician assistant shall be subject to a reasonable
20 quantitative limitation consistent with customary medical practice in the supervising physician
21 and surgeon's practice.

22 “(d) A written drug order issued pursuant to subdivision (a), except a written drug order in a
23 patient's medical record in a health facility or medical practice, shall contain the printed name,
24 address, and phone number of the supervising physician and surgeon, the printed or stamped
25 name and license number of the physician assistant, and the signature of the physician assistant.
26 Further, a written drug order for a controlled substance, except a written drug order in a patient's
27 medical record in a health facility or a medical practice, shall include the federal controlled
28 substances registration number of the physician assistant and shall otherwise comply with the

1 provisions of Section 11162.1 of the Health and Safety Code. Except as otherwise required for
2 written drug orders for controlled substances under Section 11162.1 of the Health and Safety
3 Code, the requirements of this subdivision may be met through stamping or otherwise imprinting
4 on the supervising physician and surgeon's prescription blank to show the name, license number,
5 and if applicable, the federal controlled substances registration number of the physician assistant,
6 and shall be signed by the physician assistant. When using a drug order, the physician assistant is
7 acting on behalf of and as the agent of a supervising physician and surgeon.

8 “(e)(1) The medical record of any patient cared for by a physician assistant for whom the
9 physician assistant's Schedule II drug order has been issued or carried out shall be reviewed and
10 countersigned and dated by a supervising physician and surgeon within seven days.

11 “(f) All physician assistants who are authorized by their supervising physicians to issue
12 drug orders for controlled substances shall register with the United States Drug Enforcement
13 Administration (DEA).”

14 12. Section 1399.521 of Title 16, California Code of Regulations, provides, in pertinent
15 part, that in addition to the grounds for unprofessional conduct set forth in section 3527, subd. (a),
16 the board may suspend a physician assistant for: “(a) any violation of the State Medical Practice
17 Act which would constitute unprofessional conduct for a physician and surgeon” and “(d)
18 Performing medical tasks which exceed the scope of practice of a physician assistant as
19 prescribed in these regulations.”

20 13. Section 11153 subd. (a), of the Health and Safety Code provides, in pertinent part,
21 that a prescription for a controlled substance shall only be issued for a legitimate medical purpose
22 by an individual practitioner acting in the usual course of his or her professional practice. An
23 order purporting to be a prescription which is issued not in the usual course of professional
24 treatment is not a legal prescription.

25 14. Section 11157 of the Health and Safety Code provides that: “No person shall issue a
26 prescription that is false or fictitious in any respect.”

27 15. Section 11173 of the Health and Safety Code provides, in pertinent part:
28

“(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the . . . prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

“(b) No person shall make a false statement in any prescription, order, report, or record, required by this division. . . .”

COST RECOVERY

16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

BACKGROUND

17. In January of 2013, Respondent contacted Doctor W. and asked if he would act as his supervising physician.¹ Respondent told Dr. W. that he had been providing medical care to detox patients at a drug rehabilitation center (“Drug Rehab”) under the former supervision of a physician, who had recently left Drug Rehab. Respondent wanted to continue providing care to detox patients at Drug Rehab but needed to have a supervising physician. Dr. W. agreed to act as Respondent’s supervising physician and supervise Respondent’s care of detox patients at Drug Rehab.

18. On or about March 13, 2013, Dr. W. began “supervising” Respondent. Respondent and Dr. W. did not have a delegation of services agreement nor did they establish any written guidelines for the adequate supervision of Respondent. Respondent and Dr. W. did not establish protocols for any of the tasks to be performed by Respondent. Nor did they have any protocols

¹ Respondent and Dr. W. had previously worked together at a county hospital many years earlier. At the relevant time, Dr. W.'s practice involved going to convalescent hospitals for consultations. He did not treat patients. Dr. W. is Board Certified in General Surgery and used to be Board Certified in Cardiovascular Surgery. Dr. W. has never been trained in Addiction Medicine or been board certified in Addiction Medicine.

governing the diagnosis and management of patients or a written controlled substance prescribing protocol.

19. As part of Respondent's arrangement with Dr. W., Respondent independently saw detox patients at Drug Rehab, examined, evaluated and diagnosed the patients, established detox protocols and treatment plans. Dr. W. was not present for these visits and did not examine the patients himself. For the first three months of the supervision, Dr. W. visited Drug Rehab about once a week to meet with Respondent. Most of the time was spent "settling accounts" between Respondent and Dr. W. as they had agreed to share fees. After the first few months, Dr. W. reduced his visits and only visited Drug Rehab about once a month. Dr. W. rarely reviewed any of the detox patients' medical charts. Dr. W. only reviewed a few select charts when he was at Drug Rehab for his weekly or monthly meetings with Respondent.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct/Gross Negligence/Unlicensed Practice of Medicine/Prescribing Controlled Substances without Adequate Supervision/Dishonesty/Procuring Controlled Substances by Fraud, Deceit, and/or Misrepresentation)

Patient D.G.²

20. Between January 2014 and June 2014, Respondent wrote prescriptions for controlled substances, including Norco³, Lorazepam⁴, Ambien⁵, Temazepam (Restoril)⁶ to Patient D.G, without discussing and receiving approval from Dr. W. prior to writing the prescriptions, and without having a controlled substance protocol in place. In the process of issuing the prescriptions, Respondent falsely signed the name of his supervising physician (Dr. W.) on the

² The patients will be identified by their initials to protect their identity and privacy. The Respondent may learn the patients' information through the discovery process.

³ Norco is a dangerous drug as defined in section 4022 and a Schedule II controlled substance.

⁴ Lorazepam is a dangerous drug as defined in section 4022 and a Schedule IV controlled substance.

⁵ Ambien is a dangerous drug as defined in section 4022 and a Schedule IV controlled substance.

⁶ Temazepam is a dangerous drug as defined in section 4022 and a Schedule IV controlled substance.

1 prescription slips, without Dr. W's knowledge or authority. D.G's medical records do not
2 contain any documentation regarding a discussion between Respondent and Dr. W. regarding
3 Patient D.G's prescriptions or any other aspects of the "care" provided by Respondent.
4 Additionally, the medical records lack a countersignature within seven (7) days from Dr. W. for
5 the Schedule II drugs that Respondent prescribed to Patient D.G.

6 **Patient N.W.**

7 21. Between August 2013 and November 2013, Respondent wrote prescriptions for
8 controlled substances, including Norco and Lorazepam to Patient N.W. without discussing and
9 receiving approval from Dr. W. prior to writing the prescriptions, and without having a controlled
10 substance protocol in place. In the process of issuing the prescriptions, Respondent falsely signed
11 the name of his supervising physician (Dr. W.) on the prescription slips, without Dr. W's
12 knowledge or authority. N.W.'s medical records do not contain any documentation regarding a
13 discussion between Respondent and Dr. W. regarding Patient N.W.'s prescriptions or any other
14 aspects of the "care" provided by Respondent. N.W.'s medical records lack a countersignature
15 within seven (7) days from Dr. W. for the Schedule II drugs that Respondent prescribed to Patient
16 N.W.

17 **Patient F.P.**

18 22. Between October 2013 and November 4, 2013, Respondent wrote prescriptions for
19 controlled substances, including Norco, Lorazepam, and Halcion (Triazolam)⁷ to Patient F.P.
20 without discussing and receiving approval from Dr. W. prior to writing the prescriptions, and
21 without having a controlled substance protocol in place. In the process of issuing the
22 prescriptions, Respondent falsely signed the name of his supervising physician (Dr. W.) on the
23 prescription slips, without Dr. W's knowledge or authority. F.P.'s medical records do not
24 contain any documentation regarding a discussion between Respondent and Dr. W. regarding
25 Patient F.P.'s prescriptions or any other aspects of the "care" provided by Respondent. F.P.'s

26 _____
27 ⁷ Triazolam is a dangerous drug as defined in section 4022 and a Schedule IV controlled
28 substance.

1 medical record's lack a countersignature within seven (7) days from Dr. W. for the Schedule II
2 drugs that Respondent prescribed to Patient F.P.

3 **Patient T.H**

4 23. In June 2014, Respondent wrote prescriptions for controlled substances, including
5 Lorazepam, Ambien, Halcion (Triazolam), and Buprenorphine⁸ to Patient T.H. without discussing
6 and receiving approval from Dr. W. prior to writing the prescriptions, and without having a
7 controlled substance protocol in place. In the process of issuing the prescriptions, Respondent
8 falsely signed the name of his supervising physician (Dr. W.) on the prescription slips, without
9 Dr. W's knowledge or authority. T.H.'s medical records do not contain any documentation
10 regarding a discussion between Respondent and Dr. W. regarding Patient T.H.'s prescriptions or
11 any other aspects of the "care" provided by Respondent.

12 **Patient T.F.**

13 24. Between August 2013 and May 2014, Respondent wrote prescriptions for controlled
14 substances, including Norco, Lorazepam, Clonazepam⁹, Halcion (Triazolam), and Valium¹⁰ to
15 Patient T.F. without discussing and receiving approval from Dr. W. prior to writing the
16 prescriptions, and without having a controlled substance protocol in place. In the process of
17 issuing the prescriptions, Respondent falsely signed the name of his supervising physician (Dr.
18 W.) on the prescription slips, without Dr. W's knowledge or authority. T.F.'s medical records do
19 not contain any documentation regarding a discussion between Respondent and Dr. W. regarding
20 Patient T.F.'s prescriptions or any other aspects of the "care" provided by Respondent. T.F.'s
21 medical records lack a countersignature within seven (7) days from Dr. W. for the Schedule II
22 drugs that Respondent prescribed to Patient T.F.

23 _____
24 ⁸ Buprenorphine is a dangerous drug as defined in section 4022 and a Schedule IV
controlled substance.

25 ⁹ Clonazepam is a dangerous drug as defined in section 4022 and a Schedule IV controlled
26 substance.

27 ¹⁰ Valium is a dangerous drug as defined in section 4022 and a Schedule IV controlled
28 substance.

Patient J.W.

25. In June 2014, Respondent wrote prescriptions for controlled substances, including Norco, Lorazepam, and Valium to Patient J.W. without discussing and receiving approval from Dr. W. prior to writing the prescriptions, and without having a controlled substance protocol in place. In the process of issuing the prescriptions, Respondent falsely signed the name of his supervising physician (Dr. W.) on the prescription slips, without Dr. W's knowledge or authority. J.W.'s medical records do not contain any documentation regarding a discussion between Respondent and Dr. W. regarding Patient J.W.'s prescriptions or any other aspects of the "care" provided by Respondent. J.W.'s medical records lack a countersignature within seven (7) days from Dr. W. for the Schedule II drugs that Respondent prescribed to Patient J.W.

26. Respondent is guilty of unprofessional conduct; gross negligence; unlicensed practice of medicine; prescribing controlled substances without adequate supervision; dishonesty/and or procuring controlled substances by fraud, deceit, and/or misrepresentation subject to disciplinary action under Code Sections 3527; 2234, 2234 (a), (b), and (e); 2238; 2052; 3502; 3502.1; 2054; and 2261; California Code of Regulations Section 1399.521; and Sections 11153 (a), 11157, and 11173 of the Health and Safety Code in that he prescribed dangerous and controlled substances without adequate physician supervision and wrote false prescriptions for controlled substances to patients D.G., N.W., F.P., T.H., T.F., and J.W.

SECOND CAUSE FOR DISCIPLINE

(Unlawful Representation as a Physician/Gross Negligence/Dishonesty)

Patient E.R.

27. On or about June 15, 2014, Respondent wrote a referral for Patient E.R. on Drug Rehab's letterhead and signed the referral using a fictitious and false name, followed by the initials M.D.

Patient J.W.

28. On or about June 10, 2014, Respondent sent an email to Patient J.W.'s mother and stated:

1 This is *Ben the doctor* at [Drug Rehab], I spoke to you regarding your son's medical detox.
2 After he was assessed it was determined that based on the information that he provided that
3 he required a medically supervised detox treatment plan. So I have placed him on
4 medications, which will mitigate his withdrawal, and will be following him for the next
5 several days to wean him off. As I indicated to you I am not employed by [Drug Rehab], I
6 am called in when guests require detox. The fee for the detox which includes the
7 medications and the subsequent visits is \$2500. You can please make the cheque [sic] to
8 Ben Williams, and post it to the [Drug Rehab's] address to me. Thank you.
9 [emphasis added].

10 29. Respondent is guilty of unprofessional conduct and subject to disciplinary action
11 under Code Sections 2234, and/or 2234 (a), (b), (e); and/or 2054 in that he falsely represented
12 himself as a physician in the care of Patients E.R. and J.W.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(False Records/False Representations)**

15 30. Respondent falsely documented in Patients D.G.; N.W.; F.P; T.H; T.F; and J.W's
16 medical records that Dr. W. examined/evaluated each one of them at Drug Rehab when in fact the
17 patients were only examined/evaluated by Respondent.

18 31. Respondent is guilty of unprofessional conduct and subject to disciplinary action
19 under Code Sections 2234 and/or 2261 in that he created false medical records for Patients D.G.;
20 N.W.; F.P; T.H; T.F; and J.W.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Physician Assistant Board issue a decision:


24 1. Revoking or suspending Physician Assistant License Number 19065, issued to
25 Bernard Williams, P.A.;

26 2. Ordering Bernard Williams, P.A. to pay the Physician Assistant Board the reasonable
27 costs of the investigation and enforcement of this case, pursuant to Business and Professions
28 Code Section 125.3;

1 3. Ordering Bernard Williams P.A., if placed on probation, to pay the Board the costs of
2 probation monitoring; and,

3 4. Taking such other and further action as deemed necessary and proper.
4

5 DATED: January 11, 2017


MAUREEN L. FORSYTH
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California
Complainant